



**DEPARTMENT OF THE ARMY**  
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND  
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REPLY TO  
ATTENTION OF

AFLG-PR

29 August 2000

**MEMORANDUM FOR ALL FORSCOM DOCS**

**SUBJECT: Contracting Information Letter (CIL) 00-39**

1. This CIL contains information on the following subjects:
  - a. Interim Guidance for TPP Evaluation in CA Acquisitions
  - b. Right of First Refusal and NISH Contracts
2. Interim Guidance for TPP Evaluation in CA Acquisitions. The following interim FORSCOM guidance is provided. This guidance considers recent GAO decisions, coordination between HQ FORSCOM SJA and OTJAG, and draft interim DOD guidance, 11 May 2000. Final DOD guidance is anticipated by November 2000.
  - a. Evaluate the TPP in relation to the solicitation. Determine whether or not it satisfies the PWS requirements and the requirements of Sections L & M.
  - b. Evaluate the TPP in relation to the selected "best value" offer. Determine whether or not equivalent performance quality is offered.
  - c. Reviews should be thorough. Prepare separate documents supporting the results of each evaluation.

The draft DOD guidance is clear that TPP evaluations are conducted after the BV offer is selected. For those studies facing a critical time shortage in which delaying review of the TPP until after selection of the BV offer will cause the study to exceed 48 months, installations will notify HQ FORSCOM immediately for guidance.

For additional information, please contact Ms. Henrietta White at DSN 367-7140.

3. Right of First Refusal and NISH Contracts. The right of first refusal applies to NISH contractors. However, it is important to understand that the standard right of first refusal clause (FAR 52.207-3) doesn't require the contractor, NISH or commercial, to hire a single displaced Government employee, merely give them a right of first refusal "for openings under the contract for which they are qualified."

It must also be understood that the NISH contractor must employ people who

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are blind or severely disabled on the project, usually 70 percent to 85 percent of the direct labor. It may not always be possible to start the project with the full complement of disabled workers and the Committee does allow for a phase-in of disabled workers over time.

NISH and the NISH contractor develop a plan for phase-in prior to the contract being awarded and the plan must be approved by the Committee. As a result, it should be recognized that employment of non-disabled Government employees by the NISH contractor may not be long-lived.

During the phase-in period, if non-disabled former Government employees have not found other employment, they may be subject to being let go. One advantage of a phase-in is that it may be possible to spread it over a time frame long enough that the attrition rate of the government work force is matched. The Committee normally will allow a phase-in to last as long as 18 months, but in a few cases has allowed up to two years in consideration of the existing work force.

This guidance was provided from ASA(ALT) with coordination and concurrence from the Committee for Purchase From People Who Are Blind or Severely Disabled, the Office of General Counsel, and TJAG (Army Labor Advisor).

For additional information, please contact Ms. Henrietta White at DSN 367-7140.

A handwritten signature in black ink, appearing to read 'Toni M. Gaines', with a stylized, cursive script.

TONI M. GAINES  
Acting Chief, Contracting Division, DCSLOG  
Acting Principal Assistant Responsible  
for Contracting